

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHIQUITA FRESH NORTH AMERICA, LLC,
DOLE FRESH FRUIT COMPANY,
S. KATZMAN PRODUCE INC., and
KATZMAN BERRY CORP.,

Plaintiffs,

- against -

LONG ISLAND BANANA CORP., SUFFOLK
BANANA CO., INC., and THOMAS J. HOEY,

Defendants.
-----X

Upon the sworn declaration of Megan K. Locke, the representative of plaintiff, Chiquita Fresh North America, LLC, the exhibits annexed thereto, and the accompanying memorandum in support, Plaintiffs Chiquita Fresh North America, LLC, Dole Fresh Fruit Company, S. Katzman Produce Inc. and Katzman Berry Corp. (collectively referred to as "Plaintiffs"), by undersigned counsel, moves this Court for the following relief:

1. Entry of a temporary restraining order under Rule 65(b) of the Federal Rules of Civil Procedure enforcing the statutory trust established by Section 5(c) of the Perishable Agriculture Commodities Act, 7 U.S.C. §499e(c) ("PACA"), by restraining the transfer of any and all assets of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. up to the sum of \$719,515.85, except for payment to Plaintiffs, pending either payment to Plaintiffs by bank check or wire transfer of the sum of \$719,515.85 or a further hearing to be set within fourteen (14) days of the issuance of the temporary restraining order.

2. Included in the temporary restraining order, Plaintiffs respectfully request that in the event Defendants fail to pay to Plaintiffs the amount due within two business days of service of the temporary restraining order, Defendants be required to account for the assets of Long

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Case No.

★ FEB 14 2014 ★
LONG ISLAND OFFICE

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Island Banana Corp. and Suffolk Banana Co., Inc. impressed with the trust pursuant to the provisions of the PACA by filing with this Court, with a copy to Plaintiffs' counsel, an accounting which identifies the assets and liabilities of Long Island Banana Corp. and Suffolk Banana Co., Inc. and their accounts receivable reports signed under penalty of perjury; and that Defendants shall also supply to Plaintiffs' attorney, within five (5) days of the date of the order, any and all documents in their possession, custody or control related to the assets and liabilities and related and subsidiary companies of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. including, but not limited to, the most recent balance sheets, profit/loss statements, accounts receivable reports, accounts payable reports, accounts paid records and income tax returns and bank statements with cancelled checks for the last 90 days.

3. In support of the Motion, Plaintiffs are contemporaneously filing their Memorandum in Support of Plaintiffs' Motions for Injunctive Relief.

WHEREFORE, Plaintiffs respectfully requests entry of a temporary restraining order in the form submitted herewith, including an order that Defendants should be required to account for their assets impressed with the trust provisions of the PACA, along with such further relief as the Court may deem proper.

Dated: February 13, 2014

Respectfully submitted,
McCARRON & DIESS
Attorneys for Plaintiffs

By: 

Gregory Brown
707 Walt Whitman Road, Second Floor
Melville, New York 11747
Phone: (631) 425-8110
Fax: (631) 425-8112
gbrown@mccarronlaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHIQUITA FRESH NORTH AMERICA, LLC,
DOLE FRESH FRUIT COMPANY,
S. KATZMAN PRODUCE INC., and
KATZMAN BERRY CORP.,

Case No.

Plaintiffs,

**MOTION FOR
PRELIMINARY INJUNCTION**

- against -

LONG ISLAND BANANA CORP., SUFFOLK
BANANA CO., INC., and THOMAS J. HOEY,

Defendants.
-----X

Upon the accompanying declaration of Megan K. Locke, the representative of Chiquita Fresh North America, LLC and the accompanying memorandum in support, Plaintiffs, by undersigned counsel, move this Court to issue a preliminary injunction under Rule 65(b) of the Federal Rules of Civil Procedure enforcing the statutory trust pursuant Section 5(c) of the Perishable Agriculture Commodities Act, 7 U.S.C. §499e(c) ("PACA"), by restraining the transfer of any and all trust assets of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. except for payment to Plaintiffs, until there is full payment to Plaintiffs of the amount of \$719,515.85 pending the final outcome of this action. Plaintiffs further move the Court to require Defendants to supply to Plaintiffs' counsel documentation regarding the assets of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. and their related and subsidiary companies and authorizing Plaintiffs' counsel to collect outstanding accounts receivable of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. to be held in trust pending further order of this Court.

WHEREFORE, for the reasons set forth in the accompanying memorandum, Plaintiffs respectfully request that this Court grant their motion for preliminary injunction; enjoin

Defendants from violating the trust provisions of the PACA; require Defendants to set aside the sum of \$719,515.85 in trust pending further order of this Court; require Defendants to supply to Plaintiffs' counsel documentation regarding the assets of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. and their related and subsidiary companies; and authorize Plaintiffs' counsel to collect outstanding accounts receivable of defendants Long Island Banana Corp. and Suffolk Banana Co., Inc. to be held in trust pending further order of this Court.

Dated: February 13, 2014

Respectfully submitted,
McCARRON & DIESS
Attorneys for Plaintiffs

By: 

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707 Walt Whitman Road, Second Floor
Melville, New York 11747
Phone: (631) 425-8110
Fax: (631) 425-8112
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHIQUITA FRESH NORTH AMERICA, LLC,
DOLE FRESH FRUIT COMPANY,
S. KATZMAN PRODUCE INC., and
KATZMAN BERRY CORP.,

Plaintiffs,

- against -

LONG ISLAND BANANA CORP., SUFFOLK
BANANA CO., INC., and THOMAS J. HOEY,

Defendants.
-----X

Case No.

**ATTORNEY CERTIFICATION
WHY NOTICE SHOULD NOT
BE REQUIRED PURSUANT TO
FED. R. CIV. P. 65(b)**

The undersigned, an attorney admitted to practice law before this Court, represents Plaintiffs in this action to enforce the trust provisions of the Perishable Agricultural Commodities Act, 7 U.S.C. §499e(c) ("PACA").

Notice of this motion should not be required because notice will afford Defendants an opportunity to dissipate trust assets that are required by statute to be held for the benefit of Plaintiffs, PACA trust creditors of Defendants.

Defendants are under a statutory duty to pay promptly for produce from the trust established by statute. Defendants have failed to pay, despite repeated demands and unfulfilled promises to Plaintiffs.

Advising Defendants of the pendency of this motion will allow Defendants to continue to pay non-trust debts with trust assets prior to the hearing in order to avoid serious personal liabilities, such as criminal liability for failure to pay withholding taxes. As noted in the House Report on the PACA trust amendment, once trust assets are dissipated, it is all but impossible to recover them. H.R. Rep. No. 543, 98th Cong., 2d Sess. 4 (1983), reprinted in 1984 U.S. Code & Admin. News 405, 411. See also, *Tanimura & Antle, Inc. v. Packed Fresh Produce, Inc.*, 222

F.3d 132 (3rd Cir. 2000); *J.R. Brooks & Son, Inc. v. Norman's Country Market, Inc.*, 98 B.R. 47 (Bkrtcy. N.D. Fla. 1989); *G.W. Palmer Fruit v. Thomas J. Gatziolis & Co.*, 774 F.Supp. 449 (N.D. Ill. 1991); *Gullo Produce Co., Inc. v. Jordan Produce Co., Inc.*, 751 F.Supp. 64 (W.D. Pa. 1990). Mr. Hoey's ongoing legal problems greatly increase this risk. The Court is respectfully referred to the accompanying submission from Mr. Hoey's criminal counsel to the Hon. P. Kevin Castel (annexed hereto as Exhibit G). That submission seeks reconsideration of Judge Castel's decision to deny Mr. Hoey bail, which decision was based on the grounds that Mr. Hoey poses a flight risk and is alleged to have engaged in obstruction of justice.

Account statements for Dole Fresh Fruit Company, S. Katzman Produce Inc. and Katzman Berry Corp. are annexed hereto as Exhibit H.

Entry of a temporary restraining order without notice guarantees the performance of the statutory duty to preserve and pay trust assets, and prevents any further dissipation pending a further hearing, which can be set forthwith.

Dated: February 13, 2014

Respectfully submitted,
McCARRON & DIESS
Attorneys for Plaintiff

By: 

Gregory Brown
707 Walt Whitman Road, Second Floor
Melville, New York 11747
Phone: (631) 425-8110
Fax: (631) 425-8112
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EASTERN DISTRICT OF NEW YORK

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DOLE FRESH FRUIT COMPANY,
S. KATZMAN PRODUCE INC., and
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Plaintiffs,

- against -

LONG ISLAND BANANA CORP., SUFFOLK
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Defendants.
-----X

Case No.

**DECLARATION IN SUPPORT
OF APPLICATION FOR
EMERGENCY RELIEF**

MEGAN K. LOCKE, declares under penalty of perjury as follows:

1. I am Credit Supervisor of Chiquita Fresh North America, LLC ("Chiquita" or "Plaintiff"), one of the Plaintiffs in the above-captioned action, am fully familiar with the facts and circumstances set forth herein, and have personal knowledge thereof. I submit this declaration in support of Plaintiffs' application for emergency relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

2. I am an adult who, if called upon as a witness, would and could competently testify to all facts stated in this declaration.

3. Chiquita is in the business of selling wholesale quantities of perishable agricultural commodities (hereafter "produce"). Chiquita is a produce dealer subject to and licensed under the Perishable Agricultural Commodities Act of 1930 ("PACA"), as amended, 7 U.S.C. § 499a *et seq.* Chiquita's PACA license information is annexed hereto as Exhibit A.

4. Long Island Banana Corp (Long Island Banana") and Suffolk Banana Co., Inc. ("Suffolk") are both in the business of buying and selling wholesale quantities of produce and are

subject to and licensed under PACA. The PACA license information for Long Island Banana and Suffolk are annexed hereto as Exhibit B. Thomas J. Hoey is the sole officer, principal and member of both Long Island Banana and Suffolk. See Exhibit B.

5. The sales and accounts receivable records of Chiquita, including, but not limited to, invoices and account statements, are made in the ordinary course of business and are made at or near the time of the occurrence of the event of which they are a record. These business records are generated under my direction and supervision by employees whose duty it is to prepare such documents.

6. My responsibilities as Credit Supervisor include monitoring the sale of produce, including those sales that are the subject of this claim. My responsibilities also include supervising collection of the accounts receivable for such sales, including the accounts of Defendants. I have custody and control of the sales and accounts receivable records of Chiquita as they relate to Defendants, and I am thoroughly familiar with the manner in which those records are compiled. I was responsible for supervising the collection of receivables resulting from the sales transactions, and I am the custodian of all invoices, including those at issue in this proceeding.

7. Between December 20, 2013 and January 10, 2013, Chiquita sold and delivered to Defendants wholesale amounts of produce worth \$512,866.09, all of which remains unpaid and is past due. A statement of account is annexed hereto as Exhibit C. The produce that is the subject of Chiquita's PACA trust claim was shipped and moved in interstate commerce. The produce was delivered to both 19 Old Dock Road, Yaphank, New York, which is the address for Suffolk, and 28 William Street, Lynbrook, New York 11980, which is the address of Long Island Banana.

8. Chiquita preserved its interest in the PACA trust in the amount of \$512,866.09 by timely delivering invoices to Defendants which contained the language required under Section 5(c)(4) of the PACA, 7 U.S.C. § 499e(c)(4). (A representative sample of the numerous pages of invoices delivered to Defendants by Chiquita is annexed hereto as Exhibit D.)

9. Defendants accepted the goods without protest and are obligated to hold in trust all produce-related assets received from the sale of produce in order to pay \$512,866.09 to Chiquita. In addition, Chiquita's invoices contained provisions for payment of interest and attorneys' fees on past due accounts. The reverse side of Chiquita's invoices containing the terms and conditions are annexed hereto as Exhibit E.

10. Defendants' failure, refusal, and inability to pay the amount of \$512,866.09 demonstrates that Defendants are failing to maintain sufficient assets in the statutory trust, and have dissipated and will continue to dissipate trust assets belonging to Chiquita.

11. On January 14, 2014, Long Island Banana bounced two checks to Chiquita in the amounts of \$41,611.20 and \$51,337.60. Copies of the bounced checks are annexed hereto as Exhibit F.

12. When the checks were returned, I spoke with representatives of Long Island Banana and Suffolk who confirmed that they were having severe cash flow problems partly caused by the incarceration of Mr. Hoey, the principal of Long Island Banana and Suffolk, but that they would try to make the checks good. To date, Long Island Banana and Suffolk have only replaced one of the two NSF checks. Defendants' failure and admitted inability to pay and the passing of bad checks demonstrates that Defendants have and will continue to dissipate the trust assets that are due and owing to Chiquita. Chiquita will suffer immediate and irreparable harm because it will lose the trust assets and rights that are owed under the statute.

//

13. No provisional remedy has been secured or sought in this action, and no prior application has been made for the same or similar relief as is sought herein.

I declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on January 31, 2014


MEGAN K. LOCKE



EXHIBIT A



**Agricultural
Marketing
Service**

Fruit and Vegetable Programs

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<u>License No.</u>	<u>Date Issued</u>	<u>Anniversary Date</u>	<u>Status</u>
20050043	10/15/2004	10/15/2014	Active
<u>Business Name</u>	<u>Business Address</u>	<u>City</u>	<u>State Zip</u>
CHIQUITA FRESH NORTH AMERICA LLC	550 S CALDWELL ST	CHARLOTTE	NC 282020000
<u>Web Address</u>	<u>Email</u>	<u>Phone</u>	<u>Fax</u>
	DSHERRILL@CHIQUITA.COM	980 636-5062	704 919-5230
	<u>Mailing Address</u>	<u>City</u>	<u>State Zip</u>
	550 S CALDWELL ST	CHARLOTTE	NC 282020000

Reported Principal (Last Name, First Name)

HOWLAND, BARBARA M
FRIER, RICK PATRICK
RIVERA, JUAN
CHIQUITA BRANDS LLC

Trade Names None

Branch Name , Branch City , Branch State

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To connect with the PACA National License Center, Apply for a PACA License, or check on the status of a firm's license, please contact us at:

1 (800) 495-7222, then Option #1 or email us at PACALicense@ams.usda.gov

To connect with our Good Delivery Hotline, or if you have any Good Delivery inquiries or contract-related issues, please contact us at:

1 (800) 495-7222, then Option #2

To connect with our PACA Manassas, VA Regional Office about the status of a complaint or to ask a general PACA question,

please contact us at:

1 (800) 495-7222, then Option #3 or email us at PACAManassas@ams.usda.gov

To connect with our PACA Fort Worth, TX Regional Office about the status of a complaint or to ask a general PACA question,

please contact us at:

1 (800) 495-7222, then Option #4 or email us at PACAFtWorth@ams.usda.gov

To connect with our PACA Tucson, AZ Regional Office about the status of a complaint or to ask a general PACA question,

pleasecontact us at:

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EXHIBIT B



**Agricultural
Marketing
Service**

Fruit and Vegetable Programs

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<u>License No.</u>	<u>Date Issued</u>	<u>Anniversary Date</u>	<u>Status</u>
19163602	3/30/1956	3/30/2014	Active
<u>Business Name</u>	<u>Business Address</u>	<u>City</u>	<u>State Zip</u>
LONG ISLAND BANANA CORP	28 WILLIAM ST	LYNBROOK	NY 115630000
<u>Web Address</u>	<u>Email</u>	<u>Phone</u>	<u>Fax</u>
		516 599-8844	516 599-5041
	<u>Mailing Address</u>	<u>City</u>	<u>State Zip</u>

Reported Principal (Last Name, First Name)

HOEY JR, THOMAS

Trade Names None

Branch Name , Branch City , Branch State None

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**Agricultural
Marketing
Service**

Fruit and Vegetable Programs

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<u>License No.</u>	<u>Date Issued</u>	<u>Anniversary Date</u>	<u>Status</u>
20060169	11/17/2005	11/17/2014	Active
<u>Business Name</u>	<u>Business Address</u>	<u>City</u>	<u>State Zip</u>
SUFFOLK BANANA CO INC	19 OLD DOCK RD	YAPHANK	NY 119809702
<u>Web Address</u>	<u>Email</u>	<u>Phone</u>	<u>Fax</u>
		631 205-2478	631 205-5231
	<u>Mailing Address</u>	<u>City</u>	<u>State Zip</u>
	19 OLD DOCK RD	YAPHANK	NY 119809702

Reported Principal (Last Name, First Name)

HOEY JR, THOMAS

Trade Names None

Branch Name , Branch City , Branch State None

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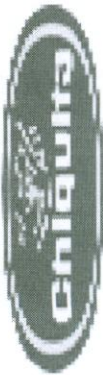
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pleasecontact us at:

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EXHIBIT C



STATEMENT

Chiquita Brands International, Inc.
550 South Caldwell Street
Charlotte, NC 28202
Phone: 980-636-5000 | Fax:

Customer #: 200031
Customer Name: LONG ISLAND BANANA
Date: 2/7/2014

Bill To: LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK, NY 11563

Invoice#	Account	Bill To#	Invoice Date	Days Past Due	Due Date	PO#	Order#	Amount	Balance
R5_145773	LONG ISLAND BANANA	200031	12/20/2013	49	12/20/2013		SO_36199776	\$ 738.40	\$ 738.40
R5_145816	LONG ISLAND BANANA	200031	12/27/2013	42	12/27/2013		SO_36202782	\$ 738.40	\$ 738.40
R5_145902	LONG ISLAND BANANA	200031	1/4/2014	34	1/4/2014		SO_36205946	\$ 738.40	\$ 738.40
R5_145904	LONG ISLAND BANANA	200031	1/4/2014	34	1/4/2014		SO_36205948	\$ 738.40	\$ 738.40
R5_145903	LONG ISLAND BANANA	200031	1/4/2014	34	1/4/2014		SO_36205947	\$ 738.40	\$ 738.40
RI_13123224	LONG ISLAND BANANA	200031	12/26/2013	22	1/16/2014		SO_36212006	\$ 12,833.00	\$ 6,614.64
RI_13123225	LONG ISLAND BANANA	200031	12/26/2013	22	1/16/2014		SO_36212007	\$ 12,833.00	\$ 12,833.00
RI_13123226	LONG ISLAND BANANA	200031	12/26/2013	22	1/16/2014		SO_36212008	\$ 12,833.00	\$ 8,404.36
RI_13123227	LONG ISLAND BANANA	200031	12/26/2013	22	1/16/2014		SO_36212010	\$ 12,833.00	\$ 12,833.00
RI_13123228	LONG ISLAND BANANA	200031	12/26/2013	22	1/16/2014		SO_36212012	\$ 12,834.40	\$ 12,834.40
RI_13123991	LONG ISLAND BANANA	200031	12/27/2013	21	1/17/2014		SO_36212013	\$ 12,833.00	\$ 12,833.00
RI_13123992	LONG ISLAND BANANA	200031	12/27/2013	21	1/17/2014		SO_36212015	\$ 12,833.00	\$ 12,833.00

Invoice#	Account	Bill To#	Invoice Date	Days Past Due	Due Date	PO#	Order#	Amount	Balance
RL_13123993	LONG ISLAND BANANA	200031	12/27/2013	21	1/17/2014		SO_36212016	\$ 12,834.40	\$ 12,834.40
RL_13123994	LONG ISLAND BANANA	200031	12/27/2013	21	1/17/2014		SO_36212018	\$ 12,834.40	\$ 12,834.40
RL_13123995	LONG ISLAND BANANA	200031	12/27/2013	21	1/17/2014		SO_36212020	\$ 10,914.40	\$ 10,914.40
RL_13125157	LONG ISLAND BANANA	200031	12/30/2013	18	1/20/2014		SO_36212023	\$ 10,913.00	\$ 10,913.00
RL_13125158	LONG ISLAND BANANA	200031	12/30/2013	18	1/20/2014		SO_36216622	\$ 12,785.00	\$ 12,785.00
RL_13125892	LONG ISLAND BANANA	200031	12/31/2013	17	1/21/2014		SO_36216621	\$ 12,785.00	\$ 12,785.00
RL_13125893	LONG ISLAND BANANA	200031	12/31/2013	17	1/21/2014		SO_36216623	\$ 12,785.00	\$ 12,785.00
RL_13125894	LONG ISLAND BANANA	200031	12/31/2013	17	1/21/2014		SO_36216624	\$ 12,785.00	\$ 12,785.00
RL_13125995	LONG ISLAND BANANA	200031	12/31/2013	17	1/21/2014		SO_36216619	\$ 13,329.40	\$ 13,329.40
RB_73421	LONG ISLAND BANANA	200031	1/23/2014	15	1/23/2014		SO_36196278	\$ 5,391.09	\$ 4,911.09
RB_73422	LONG ISLAND BANANA	200031	1/23/2014	15	1/23/2014		SO_36205944	\$ 1,283.20	\$ 803.20
RL_14127327	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216625	\$ 12,785.00	\$ 12,785.00
RL_14127328	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216626	\$ 12,785.00	\$ 12,785.00
RL_14127329	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216627	\$ 12,785.00	\$ 12,785.00
RL_14127330	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216628	\$ 12,785.00	\$ 12,785.00
RL_14127331	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216629	\$ 10,865.00	\$ 10,865.00
RL_14127332	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216630	\$ 10,865.00	\$ 6,608.56
RL_14127333	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216631	\$ 10,865.00	\$ 10,865.00
RL_14127416	LONG ISLAND BANANA	200031	1/3/2014	14	1/24/2014		SO_36216632	\$ 12,849.40	\$ 12,849.40
RL_14128487	LONG ISLAND BANANA	200031	1/6/2014	11	1/27/2014		SO_46218428	\$ 12,785.00	\$ 12,785.00

Invoice#	Account	Bill To#	Invoice Date	Days Past Due	Due Date	PO#	Order#	Amount	Balance
RI_14128488	LONG ISLAND BANANA	200031	1/6/2014	11	1/27/2014		SO_46218432	\$ 12,785.00	\$ 12,785.00
RI_14128489	LONG ISLAND BANANA	200031	1/6/2014	11	1/27/2014		SO_46218433	\$ 12,785.00	\$ 12,785.00
RI_14129154	LONG ISLAND BANANA	200031	1/7/2014	10	1/28/2014		SO_46218436	\$ 12,785.00	\$ 12,785.00
RI_14129155	LONG ISLAND BANANA	200031	1/7/2014	10	1/28/2014		SO_46218437	\$ 12,785.00	\$ 12,785.00
RI_14129156	LONG ISLAND BANANA	200031	1/7/2014	10	1/28/2014		SO_46218438	\$ 12,785.00	\$ 12,785.00
RI_14129238	LONG ISLAND BANANA	200031	1/7/2014	10	1/28/2014		SO_46218435	\$ 12,849.40	\$ 12,849.40
RI_14129771	LONG ISLAND BANANA	200031	1/8/2014	9	1/29/2014		SO_46218439	\$ 12,785.00	\$ 12,785.00
RI_14129772	LONG ISLAND BANANA	200031	1/8/2014	9	1/29/2014		SO_46218440	\$ 8,205.80	\$ 8,205.80
RI_14129773	LONG ISLAND BANANA	200031	1/8/2014	9	1/29/2014		SO_46218441	\$ 12,785.00	\$ 12,785.00
RI_14129813	LONG ISLAND BANANA	200031	1/8/2014	9	1/29/2014		SO_46218442	\$ 10,929.40	\$ 10,929.40
RI_14130275	LONG ISLAND BANANA	200031	1/9/2014	8	1/30/2014		SO_46218443	\$ 10,865.00	\$ 10,865.00
RI_14130276	LONG ISLAND BANANA	200031	1/9/2014	8	1/30/2014		SO_46218444	\$ 15,059.00	\$ 15,059.00
RI_14130277	LONG ISLAND BANANA	200031	1/9/2014	8	1/30/2014		SO_46219855	\$ 10,865.00	\$ 10,865.00
RI_14131065	LONG ISLAND BANANA	200031	1/10/2014	7	1/31/2014		SO_46219856	\$ 10,865.00	\$ 7,316.04
RN_227	LONG ISLAND BANANA	200031	1/10/2014	7	1/31/2014			\$ 41,611.20	\$ 41,611.20

Total : \$ 512,866.09

Reminder: Please include customer # 200031 on your check.
Terms: NET21 days from invoice date.

REMITTANCE

Customer Name: LONG ISLAND BANANA
Customer #: 200031
Date: 2/7/2014
Amount Due: \$ 512,866.09
Amount Enclosed:

AVERY

30% POST CONSUMER
RECYCLED PAPER

EXHIBIT D



CFNA-Atlanta
PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123224	
INVOICE DATE	DUE DATE
12/26/2013	01/16/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER
	005	12/26/13	Net 10 Days	36212006
AVAILABILITY POINT	ELR NUMBER	CARRIER		CONTAINER NUMBER
Wilmington-(BP) for Fruit		WORLDWIDE DEDICATED SERVICES		TRIU819570-3
PRODUCT CODE	PRODUCT DESCRIPTION	QUANTITY	PRICE PER	AMOUNT
1105	On The Truck	960	11.55	11,088.00
	Fuel Surcharge	960	1.05	1,008.00
	Chiquita Bananas	BX	12.60	12,096.00
	Producto of: Guatemala			
	Billable Freight Per Box	EA	737.00	737.00
			Shipment Total	12,833.00
TOTAL QTY: 0				\$12,833.00

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123225	
INVOICE DATE	DUE DATE
12/26/2013	01/16/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER	
	005	12/26/13	Net 10 Days	36212007	
AVAILABILITY POINT		ELR NUMBER	CARRIER	CONTAINER NUMBER	
Wilmington-(BP) for Fruit			WORLDWIDE DEDICATED SERVICES	CBFU346877-2	
PRODUCT CODE	PRODUCT DESCRIPTION		QUANTITY	PRICE PER	AMOUNT
1105	On The Truck		960	11.55	11,088.00
	Fuel Surcharge		960	1.05	1,008.00
	Chiquita Bananas		BX	12.60	12,096.00
	Producto of: Costa Rica				
	Billable Freight Per Box		EA	737.00	737.00
				Shipment Total	12,833.00
TOTAL QTY: 0					
					\$12,833.00

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
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Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123226	
INVOICE DATE	DUE DATE
12/26/2013	01/16/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER	
	005	12/26/13	Net 10 Days	36212008	
AVAILABILITY POINT		ELR NUMBER	CARRIER	CONTAINER NUMBER	
Wilmington-(BP) for Fruit			WORLDWIDE DEDICATED SERVICES	GESU931879-0	
PRODUCT CODE	PRODUCT DESCRIPTION		QUANTITY	PRICE PER	AMOUNT
1105	On The Truck		960	11.55	11,088.00
	Fuel Surcharge		960	1.05	1,008.00
	Chiquita Bananas		BX	12.60	12,096.00
	Producto of: Guatemala				
	Billable Freight Per Box		EA	737.00	737.00
				Shipment Total	12,833.00
TOTAL QTY: 0					
					\$12,833.00

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
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Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
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USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123227	
INVOICE DATE	DUE DATE
12/26/2013	01/16/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER	
	005	12/26/13	Net 10 Days	36212010	
AVAILABILITY POINT		ELR NUMBER	CARRIER		CONTAINER NUMBER
Wilmington-(BP) for Fruit			WORLDWIDE DEDICATED SERVICES		GESU941042-2
PRODUCT CODE	PRODUCT DESCRIPTION		QUANTITY	PRICE PER	AMOUNT
1105	On The Truck		960	11.55	11,088.00
	Fuel Surcharge		960	1.05	1,008.00
	Chiquita Bananas		BX	12.60	12,096.00
	Producto of: Guatemala				
	Billable Freight Per Box		EA	737.00	737.00
				Shipment Total	12,833.00
TOTAL QTY: 0					
					\$12,833.00

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



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PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123228	
INVOICE DATE	DUE DATE
12/26/2013	01/16/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER
	005	12/26/13	Net 10 Days	36212012
AVAILABILITY POINT	ELR NUMBER	CARRIER		CONTAINER NUMBER
Wilmington-(BP) for Fruit		WORLDWIDE DEDICATED SERVICES		GESU940987-0
PRODUCT CODE	PRODUCT DESCRIPTION	QUANTITY	PRICE PER	AMOUNT
1105	On The Truck	960	11.55	11,088.00
	Fuel Surcharge	960	1.05	1,008.00
	Chiquita Bananas	BX	12.60	12,096.00
	Producto of: Guatemala			
	Billable Freight Per Box	EA	738.40	738.40
			Shipment Total	12,834.40
TOTAL QTY: 0				\$12,834.40

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123991	
INVOICE DATE	DUE DATE
12/27/2013	01/17/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER
	005	12/27/13	Net 10 Days	36212013
AVAILABILITY POINT	ELR NUMBER	CARRIER	CONTAINER NUMBER	
Wilmington-(BP) for Fruit		LEONARDS EXPRESS	GESU940848-8	
PRODUCT CODE	PRODUCT DESCRIPTION	QUANTITY	PRICE PER	AMOUNT
1105	On The Truck	960	11.55	11,088.00
	Fuel Surcharge	960	1.05	1,008.00
	Chiquita Bananas	BX	12.60	12,096.00
	Producto of: Guatemala			
	Billable Freight Per Box	EA	737.00	737.00
			Shipment Total	12,833.00
TOTAL QTY: 0				\$12,833.00

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123992	
INVOICE DATE	DUE DATE
12/27/2013	01/17/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER	
	005	12/27/13	Net 10 Days	36212015	
AVAILABILITY POINT		ELR NUMBER	CARRIER	CONTAINER NUMBER	
Wilmington-(BP) for Fruit			LEONARDS EXPRESS	SEGU902384-0	
PRODUCT CODE	PRODUCT DESCRIPTION		QUANTITY	PRICE PER	AMOUNT
1105	On The Truck		960	11.55	11,088.00
	Fuel Surcharge		960	1.05	1,008.00
	Chiquita Bananas		BX	12.60	12,096.00
	Producto of: Guatemala				
	Billable Freight Per Box		EA	737.00	737.00
				Shipment Total	12,833.00
TOTAL QTY: 0					
\$12,833.00					

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13123993	
INVOICE DATE	DUE DATE
12/27/2013	01/17/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER
	005	12/27/13	Net 10 Days	36212016
AVAILABILITY POINT	ELR NUMBER	CARRIER		CONTAINER NUMBER
Wilmington-(BP) for Fruit		WORLDWIDE DEDICATED SERVICES		SEGU902041-3
PRODUCT CODE	PRODUCT DESCRIPTION	QUANTITY	PRICE PER	AMOUNT
1105	On The Truck	960	11.55	11,088.00
	Fuel Surcharge	960	1.05	1,008.00
	Chiquita Bananas	BX	12.60	12,096.00
	Producto of: Honduras			
	Billable Freight Per Box	EA	738.40	738.40
			Shipment Total	12,834.40
TOTAL QTY: 0				\$12,834.40

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



CFNA-Atlanta
PO Box 530414
Atlanta, GA 30353-0414

INVOICE

TO VIEW AND PAY ONLINE GO TO:
http://chiquita.billtrust.com
USE THIS ENROLLMENT CODE:
MKS LKB HKH
ACCOUNT NUMBER:
200031

INVOICE NUMBER	
13125157	
INVOICE DATE	DUE DATE
12/30/2013	01/20/2014
PLEASE REMIT PAYMENT TO:	
CFNA-Atlanta PO Box 530414 Atlanta, GA 30353-0414	
Please send ALL deduction backup to: corpdeductions@chiquita.com	

SOLD TO: 200031

SHIP TO: 200031

LONG ISLAND BANANA
28 WILLIAMS ST
LYNBROOK NY 11563-2347

LONG ISLAND BANANA
28 WILLIAM STREET
LYNBROOK NY 11563

PURCHASE ORDER #	SALES TERMS	SHIP DATE	PAYMENT TERMS	ORDER NUMBER	
	005	12/30/13	Net 10 Days	36212023	
AVAILABILITY POINT		ELR NUMBER	CARRIER	CONTAINER NUMBER	
Wilmington-(BP) for Fruit			WORLDWIDE DEDICATED SERVICES	TRIU819644-3	
PRODUCT CODE	PRODUCT DESCRIPTION		QUANTITY	PRICE PER	AMOUNT
1105	On The Truck		960	9.55	9,168.00
	Fuel Surcharge		960	1.05	1,008.00
	Chiquita Bananas		BX	10.60	10,176.00
	Producto of: Honduras				
	Billable Freight Per Box		EA	737.00	737.00
				Shipment Total	10,913.00

TERMS OF SALE FOR THIS TRANSACTION ARE STATED ON THE REVERSE SIDE OF THIS INVOICE
See back of invoice regarding Mexican Tomato Suspension Agreement

The perishable agricultural commodities listed on the invoice are sold subject to the statutory trust authorized by Section 5 (c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e (c)). The seller of these commodities retains a trust claim over these commodities. All inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

EVERY

100% POST CONSUMER
RECYCLED PAPER

EXHIBIT E

**CHIQUITA (BANANAS)
TERMS AND CONDITIONS OF SALE**

1. **ACCEPTANCE:** THE TERMS AND CONDITIONS SET FORTH BELOW AND ON THE FRONT SIDE HEREOF CONSTITUTE ALL THE TERMS OF THIS AGREEMENT IN CONJUNCTION WITH THE APPLICABLE CUSTOMER PROGRAM AGREEMENT ARE A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND SELLER. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL HAVE NO EFFECT. Any additional contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the goods described on the front side hereof are hereby objected to and shall be of no effect. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to the approval by Seller at its offices in Cincinnati, Ohio. No waiver or alteration of terms herein shall be binding unless in writing, signed by an executive officer of the Seller.
2. **QUANTITY.** Buyer and Seller agree that Seller shall not be obligated to deliver in any month more than a proportionate amount of the maximum quantity specified on the front side hereof. Such proportionate quantity shall be determined by dividing the maximum quantity requested by the total number of months included in the term of this Agreement.
3. **DELIVERY DATE.** All estimates of delivery time are approximate, and failure to effect shipment of an accepted order by such estimated delivery date will not be considered sufficient cause of cancellation without prior agreement confirmed in writing by an authorized agent of Seller. Furthermore, each delivery shall stand as a separate transaction and any failure to deliver shall have no consequence for other deliveries.
4. **TRANSPORTATION AND DELIVERY.** Unless otherwise specifically provided on the front side hereof, the price of any goods sold is F.O.B. Seller's warehouse in the market. Title to and the risk of loss of such goods passes to Buyer upon delivery by Seller to the carrier, and any claims or losses or damage in transit shall be filed by Buyer directly with the carrier. Seller reserves the right to ship goods via the most economical routing. If shipped otherwise upon the Buyer's request, Buyer shall pay the difference in the rate of transportation.
5. **CANCELLATION OR SUSPENSION OF ORDERS.** Cancellation or suspension of orders will be accepted by Seller only upon terms that will indemnify Seller for liability and expenses incurred and for commitments made by Seller and which will provide for profit on work in process and for the contract value of goods completed and ready for shipment. Postponement of deliveries at Buyer's request, if for a period of more than thirty (30) days, will not be made without Seller's approval first being obtained.
6. **TAXES.** Unless otherwise specifically provided for on the coversheet, the price for the goods purchased is net of sales, use, excise or similar taxes, whether federal, state, or local. The amount of any such taxes applicable to the goods shall be paid by Buyer unless Buyer provides Seller with a valid exemption certificate acceptable to Seller and the appropriate taxing authority.
7. **PAYMENT.** Payment for goods purchased hereunder shall be made by Buyer in U.S. dollars and immediately available funds within ten (10) days after the date of invoice. Buyer shall pay each invoice in full and shall not deduct any amounts for claims, credits or otherwise absent prior written approval. Any unpaid balance after ten (10) days shall be assessed a late charge at a rate of interest equal to the maximum rate allowable by law. In the event of installment deliveries, Seller shall be relieved from making any further shipments if Buyer fails to make payment for any installment when due. In case of doubt as to Buyer's financial responsibility, shipments under this Agreement may be suspended or sent sight draft with Bill of Lading attached by Seller. Seller reserves the right to demand a confirmed letter of credit at Buyer's full cost and expense or other security of payment in Seller's sole discretion. Seller specifically does not waive any lien rights.
8. **COST OF COLLECTION.** If Buyer defaults with respect to any payment described here and above, Buyer shall pay Seller for all costs and expenses, including legal expenses and attorneys' fees, incurred by Seller in exercising any of its rights or remedies.
9. **TERMINATION.** Notwithstanding the foregoing, this Agreement and any order or delivery may be immediately terminated or suspended (a) by either party if any proceeding in bankruptcy is brought by or against the party, (b) by the non-breaching party if the other party defaults in its material obligations and such default is not cured within ten (10) days after receiving notice of such default from the non-breaching party if such default is curable, or (c) by Seller if Seller has reason to doubt the ability or willingness of Buyer to pay for the goods.
10. **LIMITATION OF LIABILITY.** Buyer and Seller expressly agree that Seller shall have no liability, whether under the theory of tort, contract, warranty or strict liability for any loss, damage or injury arising out of the handling or use by Buyer, the party to whom the goods were shipped, the party to whom the goods were billed, the user or any other person. It is the express intent of this Agreement that Seller be indemnified by Buyer for any losses, damages or injuries for which Seller may be held liable which are caused by Buyer's products due to any improper application or use of Seller's goods to Buyer's products.
11. **WARRANTY.** Seller warrants only that goods to be delivered will conform to any approved samples and specifications. THE WARRANTIES SET FORTH IN THIS SECTION 11 ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY SELLER. Seller shall, at its option either replace non-conforming goods or credit Buyer for the purchase price for such goods. Seller will not accept the return of any goods without its prior written consent. Buyer shall give written notice to Seller of any claim for shortage or non-conforming goods within five (5) days after receipt of the goods. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim. THESE REMEDIES ARE THE EXCLUSIVE AND SOLE REMEDIES FOR ANY BREACH OF WARRANTY. All actions by Buyer against Seller shall be brought within one (1) year after the cause of action has accrued. Seller shall be given a reasonable and prompt opportunity to investigate any goods concerning which a claim is made.
12. **MODIFICATION AND WAIVER.** This Agreement constitutes the entire agreement between Buyer and Seller and there are no understandings or representations of any kind except as herein expressly set forth. Any alterations or modifications thereof shall be by mutual agreement of the parties and shall not be binding on Seller or Buyer unless made in writing and agreed to by a duly authorized official of Seller and Buyer. No claim or right arising out of breach of this Agreement can be discharged in whole or in part by waiver unless the waiver is in writing. Should any court in any jurisdiction find any provision in this Agreement unenforceable the remaining provisions shall be given full force and effect.
13. **ARBITRATION.** Any dispute, controversy or claim arising out of or relating to this Agreement, shall be decided by binding arbitration which shall be conducted, in Cincinnati, Ohio, before one (1) arbitrator designated by the American Arbitration Association (the "AAA"), in accordance with the terms of the Commercial Arbitration Rules of the AAA. Except as specifically provided herein, the arbitration shall proceed in accordance with the laws of the State of Ohio, without reference to the principles of conflict of laws. An arbitrator shall have no authority toward punitive consequential, incidental or other damages not measured by the prevailing party's actual damages. The prevailing party is entitled to an award of reasonable attorneys fees. To the maximum extent practicable, an arbitration proceeding under this Agreement shall be concluded within sixty (60) days of the filing of the dispute with the AAA.
14. **DESIGNATION OF FORUM.** The parties agree that any suit, action or proceeding brought to enforce an arbitration award rendered pursuant to this Agreement shall be instituted in the courts of the State of Ohio, Hamilton County, or the United States Court of the Southern District of Ohio, Western Division and Seller and Buyer irrevocably and unconditionally submit and consent to the jurisdiction and venue of any such court for such purpose.
15. **GOVERNING LAW.** All trade terms identified herein shall be governed by the meanings assigned to them in Incoterms 2000. The sale of the goods pursuant to this Agreement shall be governed by the laws of the State of Ohio, without reference to principles of conflict of laws and are not governed by the United Nations Convention on Contracts for the International Sale of Goods.

Rev 12-08-08

3230933.1

EXHIBIT F

FAX PER INSTRUCTIONS

Intraday Fax Notification

Date: Jan 14 2014
 Account: 1/1017297255
 Sub-account: 0

To:
 ASIA MARTIN


From:
 PNC Bank, NA
 Return Items Dept F6-F166-03-3
 8800 Tinicum Blvd
 Philadelphia, PA 19153

ITEM SEQUENCE	DEPOSIT DATE	DEPOSIT REF.NO.	CHECK NUMBER	DEPOSIT AMOUNT	CHECK AMOUNT
99002836	01/10/2014	0530414	7097	2008727.58	41611.20
Return Reason UCF/UNA - Uncollecte					
99002837	01/10/2014	0530414	7103	2008727.58	51337.60
Return Reason NSF/UNC					

2 ITEMS CHARGED TOTALING	\$92,948.80
0 ITEMS REDEPOSITED TOTALING	\$0.00
ADVICE TOTAL	\$92,948.80

TO: ASIA MARTIN COMPANY.

99002836 UCF/UNA - Uncollected/Unavailable

LONG ISLAND BANANA CORP. 28 WILLIAM STREET LYNBROOK, NY 11563		citibank <small>CITIBANK, N.A. BR #230 2201 JERICHO TURNPIKE GARDEN CITY PARK, NY 11540</small>	1-8-210 07097
		CHECK NO. CHECK DATE VENDOR NO. 01/08/14 1CHIQ	
PAY FORTY-ONE THOUSAND SIX HUNDRED ELEVEN AND***** 20/100 DOLLARS*****		CHECK AMOUNT \$*****41,611.20	
CFNA-ATLANTA P.O. BOX 530414			
TO THE ORDER OF	ATLANTA GA 30353-0414	 AUTHORIZED SIGNATURE	
⑈007097⑈ ⑆021000089⑆ 4982498511⑈			

FEDERAL RESERVE BOARD OF GOVERNORS REG. CG <small>The Federal Reserve System consists of the Board of Governors and the Federal Reserve Banks. The Board of Governors is the central bank of the United States. The Federal Reserve Banks are the operating arms of the Board of Governors. The Federal Reserve System is responsible for the nation's monetary policy and the stability of the financial system.</small>	20140110 >031000053< PNC Bank DEP. TO CR. PAYEE ABS. OF END. GTD. >031000053<	DO NOT WRITE STAMP OR SIGN BELOW THIS LINE <small>USE FOR ENDORSEMENTS ONLY</small>
	ENDORSE HERE X 20140110 530414	

TO: ASIA MARTIN COMPANY:

99002837 NSF/UNC

LONG ISLAND BANANA C		1-8-210	07103
28 WILLIAM STREET LYNBROOK, NY 11563		PNC BANK, N.A. BR #230 2001 JERICO TURNPIKE GARDEN CITY PARK, NY 11740	
		CHECK NO.	CHECK DATE VENDOR NO.
			01/09/14 ICHIQ
PAY	FIFTY-ONE THOUSAND THREE HUNDRED THIRTY***** SEVEN AND 60/100 DOLLARS*****	CHECK AMOUNT	
		\$*****51,337.60	
CFNA-ATLANTA P.O. BOX 530414			
TO THE ORDER OF	ATLANTA	GA 30353-0414	
			<i>Thomas J. Hay</i> AUTHORIZED SIGNATURE
⑈007103⑈ ⑆021000089⑆ 4982498511⑈			

FEDERAL RESERVE BOARD OF GOVERNORS REG. CC	20140110 >031000053< PNC Bank DEP. TO CR. PAYEE ABS. OF END. GTD. >031000053<	DO NOT WRITE OR SIGN BELOW THIS LINE	ENDORSE HERE	
			20140110	
			530414	

50% POST CONSUMER
RECYCLED PAPER

EXHIBIT G

LARUSSO & CONWAY, LLP

300 OLD COUNTRY ROAD

SUITE 341

MINEOLA, NY 11501

TEL: (516) 248-3520 • FAX: (516) 248-3522

February 5, 2014

Hon. Judge P. Kevin Castel
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York

Re: United States v. Thomas Hoey Jr.
Criminal Document No. CR-11-337S-3(PKC)

Dear Judge Castel:

This letter motion is respectfully submitted seeking reconsideration of the Court's December 20, 2013 and January 6, 2014 bail rulings that ordered Mr. Hoey detained without bail pending trial¹. We respectfully submit that based upon recent developments, Mr. Hoey is entitled to a reasonable bail. We request the Court to take into consideration our December 20, 2013 bail argument, as well as our December 30, 2013 letter for reconsideration.

I. New case law with respect to the narcotics counts

The government's request for detention was mostly premised upon the grounds that both Counts One and Two of the Indictment carry mandatory minimum sentences of twenty years. The government's focus on both counts has been on the death of Kim Calo. The Supreme Court has recently issued a decision that makes a conviction under Count Two more difficult for the government. On January 27, 2014 the Supreme Court, in Burrage v. United States, 2014 WL 273243 at *9, held that

¹ We had filed a notice of appeal from the January 6th, 2013 denial of our motion for reconsideration. That appeal has been withdrawn at this time.

“at least where use of the drug distributed by the defendant is not an independently sufficient cause of the victim’s death or serious bodily injury, a defendant cannot be liable under the penalty enhancement provision of 21 U.S.C. Section 841(b)(1)(C) unless such use is a but for cause of death or injury.”

Ms. Calo’s autopsy report stated that the cause of death was not merely due to cocaine use, but “acute intoxication due to the combined effects of cocaine and alcohol.” The report also detailed the presence of prescription drugs in the victim at the time of her death. The fact that Hoey and Calo were together for less than one hour the evening of Calo’s death raises a strong presumption that the myriad drugs and alcohol found in her system came from sources other than Hoey. In fact cocaine residue inside a plastic bag found in Ms. Calo’s bag strongly supports our position that the victim had ingested cocaine before arriving at the hotel. Even assuming the allegation of cocaine distribution (Count One) was accurate, (and we note the complete lack of evidence proffered by the Government with respect to this Count) the presence of alcohol and other drugs raise a serious question of criminal liability for the death of Ms. Calo. Under both traditional causation analysis and the Supreme Court’s ruling in Burrage, Ms. Calo’s death was not, beyond a reasonable doubt, “a but-for result” from Hoey’s alleged distribution of cocaine.

Furthermore, as it relates to the strength of the government’s case as to Count Two, the New York City Police Department in conjunction with the Manhattan District Attorney’s Office performed a nine month investigation into Calo’s death and brought no charges. The investigation was picked up by the Drug Enforcement Administration and the United States Attorney’s office based upon the fact that the victim was related to a Drug Enforcement Agent. At hearings held before the Honorable Judge Sidney Stein earlier this year, testimony was elicited that former Agent Arthur Anderson (the brother of the victim and a former Special Agent in Charge at Long Island DEA Office) has been in contact with the agents on this investigation.

Accordingly, we submit that the above factors be considered under 18 USC 3142(g), specifically (1) the nature and circumstances of the charged offense, and (2) the weight of the evidence against Hoey, and that such factors weigh in favor of Mr. Hoey receiving bail.

In addition, the Supreme Court’s holding in Burrage mitigates this Court’s determination that “the motive to flee is quite different as matters

stand today,” due to the “prospect of a sentence of twenty years or more if convicted of [the narcotic crimes].” (December 20, 2013 Hearing p.29) In fact, Hoey’s motivation to flee is now less, based upon the lesser prospect of his conviction under Count Two.

With respect to Hoey’s motivation to flee, the government offered the argument that Hoey had been in possession of large amounts of cash and that he traveled regularly to South and Central America. (December 20, 2013 Hearing Pages 9-11) However, such travel related to his business - he traveled to fruit producing regions because he distributed fruits in the United States. The cash constituted business proceeds that he often personally deposited in a bank. The government also set forth that Hoey owned property in Aruba; this property is a two-week time share utilized by his family. In all, Hoey is not a flight risk, as set forth more fully in pages 5-7.

II. The obstruction counts

Admittedly, “[o]bstruction of justice has been a traditional ground for pretrial detention by the courts, even prior to detention for dangerousness which was instituted by the Bail Reform Act of 1984.” United States v. LaFontaine, 210 F.3d 125, 134 (2d Cir. 2000); see also, United States v. Leon, 766 F.2d 77, 81 (2d Cir. 1985) (Obstruction of justice held to be an “alternative ground for detention,” apart from risk of flight and safety to the community).

As set forth in Counts 3 through 5 of the Indictment, the Government alleges that Hoey participated in a scheme to obstruct the investigation by “procuring” Witness 1 to commit perjury (Count 3), attempting to destroy evidence (Count 4) and threatening, pressuring and inducing Witness 1 to make false statements to law enforcement agents, to give false testimony before a grand jury and sign a false statement for future use in an official proceeding (Count 5). Although a grand jury may have found probable cause under the law, Mr. Hoey has pleaded not guilty and is presumed innocent of these charges. Based upon these charges and the evidentiary proffer at the bail hearing, the government moved to detain Mr. Hoey under §3142(f) alleging that Mr. Hoey posed a “serious risk” to obstruct or attempt to obstruct justice and threaten, injure, or intimidate a prospective witness. This Court determined that “the concern that I have is that such conduct may continue or occur in this case, which would be a matter of grave concern.” (December 20, 2013 Hearing pp.29-30).

We submit that the government's proffer failed to prove by "clear and convincing" evidence that Mr. Hoey posed such a serious risk to the prosecution of this case. As the Second Circuit held in United States v. Madoff, the critical inquiry

"is not simply whether [the defendant's] actions can be considered obstruction, but whether there is a serious risk of obstruction in the future. The statute, by its nature, is always looking forward. To be sure, the Court should consider past behavior in assessing the likelihood of prohibitive behavior in the future, but the Government needs to show that there is a serious risk that these potential harms exist going forward." 586 F.Supp.2d at 250. (emphasis added).

Here, there has been little showing of a possibility of serious risk of future obstruction. The obstruction allegations set forth in the Indictment allegedly occurred in April and May of 2011, over two and a half years ago. The Government did not proffer any other additional allegations of current obstruction of justice, and certainly nothing that has happened since May of 2011.

At the December 20, 2013 hearing, the government, in attempting to show evidence of "more recent" obstructive conduct by Hoey, heavily relied upon Mr. Hoey's pending state case, stating

"Almost nothing was said [by defense counsel] that addresses the government's point about the. .. allegations of obstructive conduct and tampering with witnesses that have been made in the state case which is more recent conduct and has been fully presented to...the State judge." (December 20, 2013 Hearing p.28) (emphasis added)

Such conduct occurred in 2009-2010 and was therefore patently not "more recent," despite what was claimed by the government. In addition, no such evidence has been "presented to the State judge." The People have filed a motion, commonly referred to as a Molineux motion (similar to a Fed R. Evid 404(b) motion) alleging such conduct. As to this "obstructive conduct" cited by the Federal prosecutors, the Molineux motion is devoid of any allegation of obstructive conduct except for a claim that Hoey called the victim's cousin after the cousin had made a 911 call thinking the victim was in trouble.² The evidence tampering allegation in the State case relates

² In addition, the government proffered to this Court that the State Court presented evidence that Hoey had violated an Order of Protection in that case. Yet the People's only claim (substantiated

to a neighbor's belief that Mr. Hoey was removing evidence of blood stains in front of his apartment door. However at a pre-trial hearing, Police Officer Kamal Williams testified that upon his arrival at the apartment he observed blood both in front of the apartment and on the door frame of the apartment. He also testified that he saw no evidence that any blood had been wiped up. Additionally Police did not find any evidence inside the apartment indicating that Mr. Hoey tampered with any evidence. (See Pages of Hearing Transcript – July 8, 2013, pgs 49- 50 attached hereto as Exhibit 1)

With respect to the Federal Indictment's three obstruction counts, the 18 USC 3142(g)(2) factor of the weight of the evidence against the defendant clearly militates in favor of granting bail. It is clear from the Indictment that the obstruction charges are premised principally on the cooperation and testimony of Witness 1, who, as the Court is aware from presiding over her trial, has provided a number of contradictory versions of the events surrounding the tragic death of Kim Calo, ultimately leading to her perjury conviction in February 2013. Witness 1 had been engaged in drug use with the victim before meeting up with Hoey. Witness 1 fled the premises upon learning of Ms. Calo's death, and Mr. Hoey was instrumental in persuading Witness 1 to return to speak with the police investigating her death. Only then did she seek to implicate Hoey in an attempt to shield herself from any wrongdoing.

Though only persuasive authority, we note that District Courts in other Circuits have found bail appropriate for defendants accused of witness tampering. See U.S. v. Kiff, 377 F.Supp.2d 586 (E.D.L.A. 2005) (Defendant was entitled to release pending trial, even though charged offenses included allegation of witness tampering, given that defendant had no criminal record and there was no evidence that her history or characteristics justified pretrial detention); U.S. v. Demmler, 523 F.Supp.2d 677 (S.D.Ohio 2007) (Defendant who was indicted for obstruction of justice and witness tampering did not present a danger necessitating his detention pending trial; defendant did not have a violent criminal history, there was no evidence that the charged offenses were carried out through use of violence, and there was no showing that defendant possessed dangerous weapons or had ambitions to procure them).

III. Dangerousness grounds are rebutted by defendant's personal history and characteristics

only through phone records) is that Hoey called the victim a couple days after the incident. In fact, no such action happened.

Like the defendants above in Kiff and Demmler, Hoey has no criminal record, violent history or experience with dangerous weapons. However, under Counts One and Two of his Indictment, Hoey faces charges that carry minimum statutory sentence such that the charges carry a presumption of risk of flight and danger to the community. "A defendant cannot be detained as dangerous under 3142(e), even if the presumption is not rebutted, unless a finding is made that no release conditions "will reasonably assure ... the safety of the community ..." U.S. v. Dominguez, 783 F.2d 702 (7th Cir.1986). As the Seventh Circuit stated in Dominguez, "to rebut this presumption [defendants] need not necessarily show that they are not guilty of the charged crimes in the first place. They could also show that the specific nature of the crimes charged, or that something about their individual circumstances, suggests that "what is true in general is not true in the particular case ..." quoting U.S. v. Jessup, 757 F.2d 378, 384 (1st Cir. 1985). Any evidence favorable to a defendant that comes within a category listed in 3142(g) can affect the operation of one or both of the presumptions, including evidence of their marital, family and employment status, ties to and role in the community, clean criminal record and other types of evidence encompassed in 3142(g)(3).

We believe that Hoey's personal history and characteristics, seen through the above lens, are sufficient to rebut a presumption of dangerousness and in fact militate toward the granting of bail. Mr. Hoey is a life long resident of New York whose entire family, including his two children, all reside in the metropolitan area. He has no prior criminal record and is a respected businessman, who owns and operates two large companies in Nassau and Suffolk Counties. Mr. Hoey is the Chief Operating Officer of both companies and employs approximately 50 employees. Since his incarceration on December 19, 2013, the business has steadily declined because of Mr. Hoey's absence and his inability to operate the company while incarcerated. Attached hereto (as Exhibit 2) are recent financial records attesting to the Companies reduced earnings and financial crisis.

We have also enclosed for the Court's review numerous letters from family members and employees of the companies attesting to not only the problems the business currently faces without Mr. Hoey's operation, but also describing Mr. Hoey as a reputable businessman and community patron.³ (Exhibit 3) If Mr. Hoey continues to be incarcerated for a period of time (a trial is still many months away) the real probability is that the

³ Hoey also serves on local hospital boards and is involved in numerous charitable organizations.

business will close or have to be sold in which case many if not all of the employees will become unemployed.

IV. Bail package

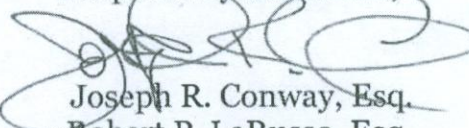
The defense is prepared to put forth at least five financially responsible people and numerous pieces of property with an approximate combined net equity value in excess of seven million dollars. Mr. Hoey's mother, father, wife, sisters and brother-in-law are prepared to sign a bond and post their homes as collateral for any bond set by the Court. All of the potential sureties were interviewed by the Pre-trial Services officer who recommended that bail be set. All of the proposed properties are in the New York area and most are the primary residences or the business properties of the sureties and/or defendant. The fact that as many as five people are willing to come forward and subject their residences to forfeiture on behalf of Mr. Hoey is an extremely strong argument that he does not pose a risk of flight or a danger to the community.

In addition to the posting of significant collateral, there are conditions or a combination of conditions that can be imposed to insure that Hoey does not present any danger to the community or potential witness. As stated above, crucial to his and his families' livelihood are the two companies he runs. As such, we propose that Hoey can be placed on house arrest with electronic monitoring and/or an electronic bracelet. He would only be allowed out of the home to work.⁴ Furthermore, additional conditions can be put in place, such as phone monitoring of Mr. Hoey (the use of a pen register which allows the government to monitor all outgoing and incoming calls), and conditions that such phone activity be limited to work and family.

In conclusion, we respectfully submit that based upon the case law that favors the presumption of release, the lack of any credible evidence that Hoey poses a future danger to the community, combined with the very substantial bail package that is being submitted, that a reasonable bail be set in this case.

cc: Margaret Garnett, Esq
Ian McGinley, Esq.

Respectfully submitted,



Joseph R. Conway, Esq.
Robert P. LaRusso, Esq.
Attorneys for Thomas Hoey

⁴ A modified schedule can be set to allow him to work a set number of hours on a daily basis.

EXHIBIT H

Katzman Produce

STATEMENT
DATE: 01/24/14

PAGE 1

LONG ISLAND BANANA
28 WILLIAMS STREET
LYNBROOK, NY 11563
Attn: TRACEY

001117

Our records indicate that the following invoices are unpaid.
Since some of these items are past due, we would appreciate
your attention.

INVOICE	DATE	TP	Current	----- DAYS LATE -----			
				1-7	8-14	15-21	Over 21
01371911	12/06/13	IV				28.00	
01373939	12/13/13	IV			293.00		
01378481	01/03/14	IV	109.00				
			109.00	.00	293.00	28.00	.00
BALANCE DUE...			\$430.00				

Katzman Produce

STATEMENT
DATE: 01/24/14
PAGE 1SUFFOLK BANANA
19 OLD DOCK ROAD
YAPHANK NY 11980
Attn: JOHNNY

903588

Our records indicate that the following invoices are unpaid.
Since some of these items are past due, we would appreciate
your attention.

INVOICE	DATE	TP	Current	----- DAYS LATE -----			
				1-7	8-14	15-21	Over 21
01372081	12/06/13	IV				2,874.00	
00268301	12/13/13	CM			-188.00		
00268879	12/13/13	CM			-30.00		
01374108	12/13/13	IV			3,143.00		
00269873	12/20/13	CM		-12.00			
01375297	12/20/13	IV		2,660.50			
00270383	12/27/13	CM	-90.00				
00270909	12/27/13	CM	-494.00				
01376528	12/27/13	IV	4,844.00				
01380020	01/10/14	IV	1,974.00				
			6,234.00	2,648.50	2,925.00	2,874.00	.00
BALANCE DUE... \$14,681.50							

Katzman Berry

STATEMENT
DATE: 01/24/14

PAGE 1

LONG ISLAND BANANA
28 WILLIAMS STREET
LYNBROOK, NY 11563
Attn: TRACEY

001117

Our records indicate that the following invoices are unpaid.
 Since some of these items are past due, we would appreciate
 your attention.

INVOICE	DATE	TP	Current	----- DAYS LATE -----			
				1-7	8-14	15-21	Over 21
01372219	12/06/13	IV				320.00	
			.00	.00	.00	320.00	.00
BALANCE DUE...			\$320.00				

Katzman Berry

STATEMENT

DATE: 01/24/14

PAGE 1

SUFFOLK BANANA
 19 OLD DOCK ROAD
 YAPHANK NY 11980
 Attn: JOHNNY

903588

Our records indicate that the following invoices are unpaid.
 Since some of these items are past due, we would appreciate
 your attention.

INVOICE	DATE	TP	Current	----- DAYS LATE -----			
				1-7	8-14	15-21	Over 21
01375564	12/20/13	IV		236.00			
01376782	12/27/13	IV	1,214.00				
			1,214.00	236.00	.00	.00	.00
BALANCE DUE... \$1,450.00							